Supreme Court, U.S.
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No. 85-2052

In the Supreme Court of the United States

OCTOBER TERM, 1985

LEON JUDSON WOOD, III, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the court of appeals erred in reversing an order dismissing an indictment because the government failed to adhere to a non-prosecution agreement.

On March 12, 1984, petitioner was added as a defendant in two counts of a twenty-count superseding indictment returned in the United States District Court for the Middle District of Florida. The indictment charged him with participation in the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(c), and conspiracy to commit that offense, in violation of 18 U.S.C. 1962(d). Before trial, petitioner moved to dismiss the indictment on the ground that the government had breached an agreement in which it had agreed not to prosecute him in exchange for truthful information about bribery attempts

and drug trafficking. The government responded that it was no longer bound by the agreement because petitioner had breached the agreement by withholding evidence and providing false information.

Following an evidentiary hearing, a magistrate concluded that the government had failed to establish a substantial breach of the agreement and recommended that the indictment against petitioner be dismissed (Pet. App. 10a-13a). On March 7, 1985, the district court adopted the magistrate's report and dismissed the indictment (Pet. App. 8a-9a).

On January 21, 1986, the court of appeals reversed (Pet. App. 1a-6a). It held that the district court's finding was clearly erroneous because the record showed that petitioner had violated the agreement by not disclosing his role in a drug operation in Jacksonville, Florida.

Petitioner contends (Pet. 8-10) that the court of appeals should have affirmed the magistrate's factual finding and that the government should therefore be estopped from prosecuting him. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court.[1] The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to dismiss. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contentions to this Court, together with any

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[1]It is now more than 27 months since the return of the indictment and more than 15 months since the district court's dismissal order. Further interlocutory review at this time would cause additional delay in the final resolution of the charges against petitioner.

other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

JULY 1986

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[2]Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.